

1 HON: \_\_\_\_\_

2 Sanders Law Group  
3 Craig B. Sanders, Esq. (WSBA #46986)  
333 Earle Ovington Boulevard, Suite 402  
4 Uniondale, NY 11553  
Tel: (516) 203-7600  
Email: Csanders@Sanderslaw.Group  
5 File No.: 125511

6 Attorneys For Plaintiff

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10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF WASHINGTON**

12 **SPOKANE DIVISION**

13 Ash Newell,

14 Plaintiff,

15 v.

16 Inland Publications, Inc.,

17 Defendant.

18 Case No: \_\_\_\_\_

19

20 **COMPLAINT**

21

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff Ash Newell (“*Plaintiff*”), by and through his undersigned counsel,  
24 for his Complaint against defendant Inland Publications, Inc. (“*Defendant*”) states  
25 and alleges as follows:

26

27 **INTRODUCTION**

28 1. This action seeks to recover damages for copyright infringement.

29 2. Plaintiff herein creates photographic images and owns the rights to

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1 these images which Plaintiff licenses for various uses including online and print  
2 publications.

4. Defendant, without permission or authorization from Plaintiff actively  
7 copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged  
8 in this misconduct knowingly and in violation of the United States copyright laws.  
9

## PARTIES

12       5. Plaintiff Ash Newell is an individual who is a citizen of the State of  
13 Kentucky and maintains a principal place of business in Jefferson County, Kentucky.

14       6. Upon information and belief, defendant Inland Publications, Inc., is a  
15 Washington corporation with a principal place of business at 1227 West Summit  
16 Parkway, Spokane in Spokane County, Washington.  
17

## **JURISDICTION AND VENUE**

20       7. This Court has subject matter jurisdiction over the federal copyright  
21 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

23       8. This Court has personal jurisdiction over Inland Publications, Inc.  
24 because it maintains its principal place of business in Washington.

25       9.     Venue is proper under 28 U.S.C. §1391(a)(2) because Inland  
26 Publications, Inc. does business in this Judicial District and/or because a substantial

1 part of the events or omissions giving rise to the claim occurred in this Judicial  
2 District.  
3

4 **FACTS COMMON TO ALL CLAIMS**

5 10. Plaintiff is a professional photographer by trade who is the legal and  
6 rightful owners of photographs which Plaintiff licenses to online and print  
7 publications.  
8

9 11. Plaintiff has invested significant time and money in building Plaintiff's  
10 photograph portfolio.  
11

12 12. Plaintiff has obtained active and valid copyright registrations from the  
13 United States Copyright Office (the "USCO") which cover many of Plaintiff's  
14 photographs while many others are the subject of pending copyright applications.  
15

16 13. Plaintiff's photographs are original, creative works in which Plaintiff's  
17 own protectable copyright interests.  
18

19 14. Inland Publications, Inc. is the registered owner of the Website and is  
20 responsible for its content.  
21

22 15. Inland Publications, Inc. is the operator of the Website and is  
23 responsible for its content.  
24

25 16. The Website is a popular and lucrative commercial enterprise.  
26

27 17. The Website is monetized in that it contains paid advertisements and,  
28 upon information and belief, Defendant profits from these activities.  
28

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1       18. On September 1, 2011, Plaintiff authored a portrait of Kris  
2 Kristofferson (the “*Photograph*”). A copy of the Photograph is attached hereto as  
3 Exhibit 1.

5       19. Plaintiff applied to the USCO to register the Photograph on or about  
6 February 14, 2019 under Application No. 1-7419920812.  
7

8       20. The Photograph was registered by the USCO on February 14, 2019  
9 under Registration No. VA 2-146-260.  
10

11       21. On April 28, 2022 Plaintiff first observed the Photograph on the  
12 Website in a story dated February 14, 2019. A copy of the screengrab of the Website  
13 including the Photograph is attached hereto as Exhibit 2.  
14

15       22. The Photograph was displayed at URL:  
16 <https://www.inlander.com/spokane/a-look-at-kris-kristoffersons-career-as-one-of-the-preeminent-musical-voices-of-his-generation/Content?oid=16486022>.  
17  
18

20       23. The Photograph was stored at URL:  
21 <https://media1.fdncms.com/inlander/imager/u/original/16486021/music2-1-e9544b17837c9169.jpg>.  
22  
23

24       24. Without permission or authorization from Plaintiff, Defendant  
25 volitionally selected, copied, stored and/or displayed Plaintiff copyright protected  
26 Photograph as is set forth in Exhibit “1” on the Website.  
27

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1       25. Upon information and belief, the Photograph was copied, stored and  
 2 displayed without license or permission, thereby infringing on Plaintiff's copyrights  
 3 (hereinafter the "*Infringement*").  
 4

5       26. The Infringement includes a URL ("Uniform Resource Locator") for a  
 6 fixed tangible medium of expression that was sufficiently permanent or stable to  
 7 permit it to be communicated for a period of more than a transitory duration and  
 8 therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v.*  
 9 *Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).  
 10

11       27. The Infringement is an exact copy of the entirety of Plaintiff's original  
 12 image that was directly copied and stored by Defendant on the Website.  
 13

14       28. Upon information and belief, Defendant takes an active and pervasive  
 15 role in the content posted on its Website, including, but not limited to copying,  
 16 posting, selecting, commenting on and/or displaying images including but not  
 17 limited to Plaintiff's Photograph.  
 18

19       29. Upon information and belief, Defendant directly contributes to the  
 20 content posted on the Website by, inter alia, directly employing reporters, authors  
 21 and editors as its agents, including but not limited to Nathan Weinbender who is  
 22 listed on Defendant's Website as a Defendant's "Music & Film editor"  
 23 ("Employees").  
 24

25       30. Upon information and belief, at all material times the Employees were  
 26

1 acting within the course and scope of their employment when they posted the  
2 Infringement.  
3

4       31. Upon information and belief, at all material times the Employees were  
5 acting within the course and scope of their agency when they posted the  
6 Infringement.  
7

8       32. Upon information and belief, the Photograph was willfully and  
9 volitionally posted to the Website by Defendant.  
10

11       33. Upon information and belief, Defendant is not registered with the  
12 United States Copyright Office pursuant to 17 U.S.C. §512.  
13

14       34. Upon information and belief, Defendant engaged in the Infringement  
15 knowingly and in violation of applicable United States Copyright Laws.  
16

17       35. Upon information and belief, Defendant has the legal right and ability  
18 to control and limit the infringing activities on its Website and exercised and/or had  
19 the right and ability to exercise such right.  
20

21       36. Upon information and belief, Defendant monitors the content on its  
22 Website.  
23

24       37. Upon information and belief, Defendant has received a financial benefit  
25 directly attributable to the Infringement.  
26

27       38. Upon information and belief, the Infringement increased traffic to the  
28 Website and, in turn, caused Defendant to realize an increase its advertising revenues  
29

1 and/or merchandise sales.

2       39. Upon information and belief, a large number of people have viewed the  
3                  unlawful copies of the Photograph on the Website.  
4

5       40. Upon information and belief, Defendant at all times had the ability to  
6 stop the reproduction and display of Plaintiff's copyrighted material.

8       41. Defendant's use of the Photograph, if widespread, would harm  
9 Plaintiff's potential market for the Photograph.

10           42. As a result of Defendant's misconduct, Plaintiff has been substantially  
11           harmed.  
12

**FIRST COUNT**  
*(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)*

15       43. Plaintiff repeats and incorporates by reference the allegations contained  
16 in the preceding paragraphs, as though set forth in full herein.

18       44. The Photograph is an original, creative work in which Plaintiff owns  
19 valid copyright properly registered with the United States Copyright Office.

20       45. Plaintiff has not licensed Defendant the right to use the Photograph in  
21 any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights  
22 to Defendant.  
23

25       46. Without permission or authorization from Plaintiff and in willful  
26 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and  
27 illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed

1 works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in  
2 its copyrights.  
3

4       47. Defendant's reproduction of the Photograph and display of the  
5 Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v.*  
6 *Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).  
7

8       48. Plaintiff is informed and believes and thereon alleges that the  
9 Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation  
10 of Title 17 of the U.S. Code, in that they used, published, communicated, posted,  
11 publicized, and otherwise held out to the public for commercial benefit, the original  
12 and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by  
13 using it in the infringing article on the Website.  
14

15       49. As a result of Defendant's violations of Title 17 of the U.S. Code,  
16 Plaintiff is entitled to an award of actual damages and disgorgement of all of  
17 Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504  
18 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for  
19 statutory damages against Defendant for the infringement pursuant to 17 U.S.C. §  
20 504(c).  
21

22       50. As a result of the Defendant's violations of Title 17 of the U.S. Code,  
23 the court in its discretion may allow the recovery of full costs as well as reasonable  
24 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.  
25

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1       51. As a result of Defendant's violations of Title 17 of the U.S. Code,  
2 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his  
3 copyright pursuant to 17 U.S.C. § 502.  
4

## JURY DEMAND

52. Plaintiff hereby demands a trial of this action by jury.

## **PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
  - b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
  - c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant

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- 1 from any infringing use of any of Plaintiff's works;
- 2 d. for costs of litigation and reasonable attorney's fees against
- 3 Defendant pursuant to 17 U.S.C. § 505;
- 4 e. for pre judgment interest as permitted by law; and
- 5 f. for any other relief the Court deems just and proper.
- 6
- 7

DATED: February 01, 2023

9 **SANDERS LAW GROUP**

10 By: /s/ Craig B. Sanders  
11 Craig B. Sanders, Esq. (WSBA #46986)  
12 333 Earle Ovington Boulevard, Suite 402  
13 Uniondale, NY 11553  
14 Tel: (516) 203-7600  
15 Email: csanders@sanderslaw.group  
16 File No.: 125511

17 *Attorneys for Plaintiff*